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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Reissue Patent No. RE 38,216

Issue Date: August 12, 2003

Serial No: 09/174,804

Filed: October 19, 1998

For: SCOOPED LACROSSE HEAD

Attorney Docket No: WLI 1004 R

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*Domen Hoeg*  
Signature

**PETITION FOR RECONSIDERATION UNDER 37 C.F.R. 1.378(E)**

On January 19, 2007, Petitioner filed a Petition to Accept Unavoidably Delayed Payment of Maintenance Fee In An Expired Patent Pursuant to 37 C.F.R. 1.378(b) ("the January 2007 Petition"). The January 2007 Petition put forth evidence demonstrating that the second maintenance fee for the '216 patent was not paid despite: (1) the Artz Firm's reliance on an industry-recognized docketing system (CPI); (2) a well-established and reliable procedure for processing docketing action items; and (3) assurances and representations from a competent and reliable patent assistant whose job responsibilities included attending to the payment of maintenance fees.

The January 2007 Petition details the basis supporting this brief summary. Additionally, the January 2007 Petition was supported by Declarations and documentary evidence demonstrating these facts and the other facts set forth in the Petition. Senior

Petitions Attorney Ball reviewed the January 2007 Petition and accompanying evidence and determined that the Petitioner's showing was inadequate for two reasons. Specifically, the Petitions Attorney stated:

1. Petitioner has not shown that payment of the maintenance fee was a clerical function reasonably expected to be performed by Latitia Ford thus that the failure to pay the maintenance fee was a clerical error in the course of her duties; and
2. In view of the later learned mental and physical condition and ultimate death from the conditions Mrs. Ford experienced, it would appear incumbent upon the petitioners to review Mrs. Ford's work to determine that all had been handled properly and thus perhaps the failure to pay the maintenance fee and expiration of the instant patent could have been determined earlier.

(Decision on Petition, p. 3.) The Petitioner specifically requests reconsideration of the dismissal of the January 2007 Petition because the evidence demonstrates that (1) the electronic payment of maintenance fees via the Internet on the Patent Office website is a clerical function that was within Mrs. Ford's job responsibilities and (2) until January 2007, nobody at the Artz Firm had any reason to suspect that Mrs. Ford had been suffering from anything which would have affected her memory or physical abilities.

As to point one, the Petitioner submits that the actual payment of the maintenance fee was indeed an electronic clerical function, the ultimate payment of which was part of Mrs. Ford's job duties and responsibilities after she was instructed to pay it. Consistent with the Patent Office procedures and the practice of the Artz Firm, Ms. Ford, during the relevant time period, utilized the Patent Office's electronic filing system to submit filings, such as maintenance fee payments. With electronic filing, there is no requirement that an attorney sign maintenance fee transmittal documents. In fact, maintenance fee payments do not have to be made by an attorney; they can be

made by anyone, including clerks and service firms. The step of making a maintenance fee payment electronically is indeed a clerical function.

As to point two, no one at the Artz Firm was aware that Mrs. Ford was seriously ill during the tenure of her employment and no one was aware of her specific illness until after the failure to pay the maintenance fee was discovered. While Mrs. Ford was at the Artz Firm, she did not exhibit any uncommon work absences or work errors, and had no unusual changes in her behavior. The Artz Firm was pleased with the quality of her work and had no reason to question whether the cause of her death affected her job performance. Indeed, even Mrs. Ford's mother (Annie Hubbard) was unaware that Mrs. Ford was sick at all until Mrs. Ford entered the hospital.

Each of these two points is addressed individually in more detail below.

**Mrs. Ford's E-Payment of Maintenance Fees:**

**Patent Office Electronic Filing System**

In 2000 after a pilot program, the Patent Office announced that its Electronic Filing System ("EFS") was available to the general public for electronic filing. (Exhibit A, November 14, 2000, O.G. Notice.) One of the purposes of the electronic filing program was to decrease paper filings and allow more paperless filings with the Patent Office. Benefits of the program included a decreased backlog of cases, less time scanning paper filings to put them in electronic form, and increased access to application information in electronic form. While some practitioners availed themselves of the electronic filing program, the numbers were still relatively small for a period of time. The Patent Office thus took steps to increase the number of users by various initiatives,

including making it more user friendly. (See, e.g. article attached as Exhibit B.) The Patent Office also proposed fee decreases as an incentive for electronic filing.

#### The Artz Firm and The Electronic Filing System

The Artz Firm represented some large companies, including two that were early users of the electronic filing system. These companies participated in the pilot program for the EFS and thus firms that prepared and prosecuted patent applications for them were trained on the EFS and were required to use it. The secretaries, legal assistants, and those associated with the actual electronic filing of materials with the Patent Office received extensive training on this matters. (See Declaration of Angie Moscovitz, Exhibit C, ¶¶ 4-6.) Mrs. Ford was one of those employees who received such training on the Patent Office electronic filing system.

#### The E-Filing Of Maintenance Fees

Since the inception of the Artz Firm, the legal secretaries took most of the steps relative to payment of maintenance fees. Up until about 2003, the Artz Firm paid maintenance fees by mailing a Maintenance Fee transmittal sheet together with the appropriate payment. (Declaration of John S. Artz, Exhibit D.) Since Mrs. Ford began working for Mr. John S. Artz, they followed this procedure. When a maintenance fee payment appeared on the docket sheet, Mr. Artz would determine what steps were to be taken. For example, if Mr. Artz already had instructions to pay the fee, he would instruct Mrs. Ford to pay the fee. She would then prepare the maintenance fee transmittal for Mr. Artz's signature. Once executed, Mrs. Ford would proceed to mail it or otherwise transmit it to the Patent Office.

In other instances, Mr. Artz, would contact the client to determine whether they wanted the maintenance fee payment to be made. Once instructions were received to pay the maintenance fee, the above steps would be taken to make payment.

In 2002, the Patent Office allowed payment of Maintenance Fees to be made over the Internet website with the payment being charged to a Deposit Account. (Exhibit E, January 1, 2002, O.G. Notice.) Under these Patent Office procedures, the payment of maintenance fees is a clerical function and payments can be – and are today – made by anyone. Maintenance fees can be made by clients, service firms, etc.; the payments do not have to be made or authorized by an attorney.

By mid-2003, Mrs. Ford as well as the other secretaries in the Artz Firm whose job responsibilities included making these payments, began paying maintenance fees electronically and charging the required payment to the Artz Firm Deposit Account. As attested to by Mr. John S. Artz, part of Mrs. Ford's duties and responsibilities included electronic filing of documents with the Patent Office, as well as the electronic payment of maintenance fees when instructed. As established in the January 2007 Petition, Mrs. Ford was a competent and reliable employee. Indeed, once instructed to make a maintenance fee payment, she did so on all required occasions beginning in mid-2003 until she left the Artz Firm in 2005 – except for the one maintenance fee for the '216 patent that is the subject of the present Petition.

Further, Mrs. Ford followed proper Patent Office procedures. As evidenced by the exemplary filings that she made, Mrs. Ford printed out the initial sheet as to the amount due. Then Mrs. Ford went to the Patent Office website and followed the steps to make the payment. She checked the box indicating that she wanted a statement.

Once the payment was made, the statement was printed out and put in the file. She also indicated to the Patent Office that the payment was to be charged to the Artz Firm Deposit Account. (Examples of receipts she printed out evidencing payment (as pulled from the files) together with the corresponding charge to the deposit account are attached to the Declaration of John S. Artz.)

The Patent Office website does not require or even allow an attorney's signature to be inserted when the maintenance fee payments are being made. Thus, Mr. John S. Artz did not need to – and could not -- sign any maintenance fee transmittals. The actual submission of payment of the maintenance fee on the Patent Office website is clearly a clerical function, similar to the act of mailing or faxing a Maintenance Fee Transmittal before 2003.

Here, Mr. Artz already had the client's instructions with respect to this maintenance fee. Thus, when it appeared on the docket, he instructed Mrs. Ford to electronically pay it as she had done with other such payments. Mrs. Ford indicated she would do that and subsequently told Mr. John S. Artz that the payment had been made. The failure to pay this maintenance fee was thus a clerical error and was therefore unquestionably unavoidable.

**The Lack of Knowledge of Mrs. Ford's Illness:**

As set forth in the Petition, Ms. Ford left employment with the Artz Firm in March 2005. During the entire term of her employment, no one at the Artz Firm knew or suspected that Mrs. Ford had a serious illness. Mrs. Ford did not tell anyone that she was sick and never displayed any symptoms or other signs that would cause anyone to question that she was sick in any way or that her memory or abilities were affected.

(See e.g. Declaration of Steve Hays, Exhibit F.) In fact, even Mrs. Ford's mother (Annie Hubbard) said she did not know Mrs. Ford was sick. (See Declaration of Annie Hubbard, Exhibit G.) If her own mother, who was very close to Mrs. Ford and who watched her kids after school on most days, did not have any reason to think that Mrs. Ford was sick, it would be unreasonable to believe that anyone at the Artz Firm would have a reason to think differently.

As set forth in the Petition, the first time anyone at the Artz Firm learned that Mrs. Ford was sick was after she was admitted into the hospital in June 2005. (Exhibit C, ¶9.) She died suddenly thereafter in July 2005. When she died, the only information provided about the cause of death was that she had died of a "brain infection". There was no reason for anyone to believe that this was a condition that existed during her employment at the Artz Firm, or was something which might have affected her physical or mental capacity while at the Artz Firm. Indeed, it was something that Mrs. Ford took every precaution to keep secret and hidden – even from her mother. (Exhibit G, ¶¶ 6-8.)

It was only after the non-payment of the maintenance fee at issue came up in January 2007 that some of the effects of Mrs. Ford's illness became known. During a discussion with Mrs. Ford's second husband in January 2007, he indicated that she had an illness for a few years before her death and that in the fall of 2004 the illness advanced from a relative dormant state to an advanced terminal condition. However, no one at the Artz Firm – or even her mother – noticed any change in her personality, demeanor or work product.

After learning in early 2007 that Mrs. Ford had been fatally ill, the personnel at the Artz firm tried to think of any signs that would have led any of them to question whether she was sick or ill. No one could do so. Mrs. Ford simply displayed no signs of any illness and her work product did not diminish. Mr. John S. Artz was only able to remember a short period in late 2004<sup>1</sup> where Mrs. Ford did not seem to be as care free and happy as he was accustomed. As stated in the Petition, Mr. Artz asked her if she was "OK" and she indicated that she was a "little overwhelmed." (This was about the same as everyone in every work environment seems to feel at one time or another.) Mr. John S. Artz attributed this to personal issues outside of work. In a short period of time, her disposition returned to normal and remained that way until she left in March 2005. In fact, a week or two after Mrs. Ford left, she went on a previously scheduled cruise with her parents. After returning from her vacation, she visited John S. Artz and others at the office and appeared fine.

Until early 2007, there simply was no reason for anyone to believe that Mrs. Ford was terminally ill or was suffering from an illness that could have affected her memory or ability to perform her work activities.

It is also noteworthy to point out that once the missed maintenance fee was discovered in 2007 and the Artz Firm learned for the first time the nature of her illness, the attorneys and staff at the Artz Firm made a thorough search of all of the files and matters that Mrs. Ford had worked on while at the Artz Firm to see if there were any other missed dates or assignments. Nothing was found. This demonstrates that the

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<sup>1</sup> The January 2007 Petition stated that this occurred by "early 2005". However, Mr. John S. Artz has now been able to more accurately pinpoint that date.

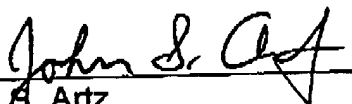


Artz Firm took reasonable steps to review past actions where appropriate and also shows that the missed maintenance fee payment for the '216 patent was indeed an unavoidable clerical error.

Respectfully submitted,

DICKINSON WRIGHT PLLC

By:

  
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Dated: January 8, 2008  
BLOOMFIELD 36218-6 887680V1A

# EXHIBIT A

Department of Commerce  
United States Patent and Trademark Office  
37 CFR 1.182, 1.183

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Electronic Filing System Available to Public

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Agency: United States Patent and Trademark Office

Summary: The United States Patent and Trademark Office (USPTO or Office) recently announced the availability of the Electronic Filing System (EFS) to the public. A description of the system, its operation, and the application of regulations to submissions under the EFS are presented.

For Further Information Contact: Jay Lucas at jay.lucas@uspto.gov. Questions on the operation of the EFS system should be directed to the SIRAI/EFS project primary contact, Ms. Diane Lewis at diane.lewis@uspto.gov. Correspondence may also be addressed to Jay Lucas or Diane Lewis, United States Patent and Trademark Office, Washington, D.C. 20231.

#### Description of the Electronic Filing System

The United States Patent and Trademark Office (USPTO or Office) has recently announced that its Electronic Filing System (EFS) is available to the general public for electronic filing. The software has completed a successful pilot program involving patent application submissions from law firms, companies, and independent inventors. Numerous changes to the software have been made in response to their feedback.

In October 2000, the USPTO distributed a new production version of EFS software. This software is used for three types of electronic submissions: (1) new utility patent applications, (2) computer readable form (CRF) of nucleotide and/or amino acid sequence listings, and (3) copies of applications for Patent Application Publication. Applicants using EFS will submit encrypted text and image files to the USPTO and receive an immediate Acknowledgement Receipt that summarizes their submission. If the submission is for a new application, it will enter the normal examination process. Sequence listings will be stored and processed. Resubmitted applications for 18-Month Publication will be directed to the responsible Office division for Patent Application Publication processing. Complete information on EFS is available on the Patents Electronic Business Center Web Page, at the USPTO Website: <http://uspto.gov/ebc>.

The EFS distribution includes two types of software packages: (1) word processing templates to create an electronic specification, and (2) a separate, stand-alone validation and transmission program called ePAVE. The word processing templates, available in either Microsoft Word or WordPerfect format, allow the user to create an eXtensible Markup Language (XML) document with tags that identify the content of each element of the specification. For example, one XML tag will identify the title and a separate tag will identify the first claim. These tags will be used to control the display of the specification in a standard Internet browser form that can be processed by the USPTO.

The ePAVE program prompts the user to associate with a specification file standard bibliographic data, payment information, and publication information. The ePAVE program also allows the user to attach drawings, a scanned declaration, a nucleotide and/or amino acid sequence listing, and an assignment information sheet for new utility applications. ePAVE

then validates the information, displays it to the applicant, prompts for an electronic signature, uses the applicant's digital signature to encrypt the whole package, and transmits the submission to the USPTO. Upon receipt, the Office sends to the applicant an "electronic post card" Acknowledgement Receipt, itemizing the files received by the USPTO.

As mentioned above, EFS will be used for three purposes: Utility Patent Applications, Biotechnology Sequence Listings, and Patent Application Publications.

#### Utility Patent Applications

Most non-provisional utility applications can be filed using EFS. Certain types of patent applications, however, must be filed in paper form since the necessary software templates for these submissions have not yet been developed or for other reasons. For example, provisional patent applications, design applications, secrecy order (national security) applications, international applications, and plant patent applications are not, as yet, acceptable for EFS. Detailed requirements for submissions are contained in the documentation provided on the Patents Electronic Business Center Web Page, at the USPTO Website: <http://www.uspto.gov/ebc>. Until the USPTO moves to full electronic examination, utility applications filed using EFS will be printed on paper. This paper copy will become part of the official application file and be examined like any other application.

#### Biotechnology Sequence Listings

Applicants may submit the CRF of a sequence listing required by 37 CFR 1.821(e) for a previously submitted application (having an application number) using EFS instead of the conventional means indicated in 37 CFR 1.824. Sequence listings can also be submitted with new patent applications using EFS as described in the previous paragraph.

#### Patent Application Publications

The EFS software is also used for resubmission of utility patent applications for publication (i.e., Domestic Publication of Patent Applications Published Abroad under P.L. 106-113). Consult the new regulations set forth in 37 CFR 1.211-1.221 for a full description of publication of applications.

Ordinarily, the application, as filed, is used for the Eighteen-Month Publication. However, if applicant desires the publication of

- a) a redacted copy of an application under 37 CFR 1.217;
- b) the application as amended under 37 CFR 1.215;
- c) an application filed before, but pending on November 29, 2000 under 37 CFR 1.221 (voluntary publication); or
- d) an application previously published under 37 CFR 1.211 (a republication under 37 CFR 1.221)

then the application must be resubmitted in electronic form using EFS. If applicant requests early publication under 37 CFR 1.219, then an electronic copy may be submitted using EFS.

Detailed explanations of these procedures are available on the Patents Electronic Business Center Web Page, at the USPTO Website: <http://www.uspto.gov/ebc>.

#### Public Key Infrastructure Certificates

EFS, as well as the companion Patent Application Information Retrieval system (PAIR), relies on Public Key Infrastructure (PKI) technology to assure the confidentiality, authenticity, and integrity of communications over the Internet. Applicants who intend to use EFS must register to obtain a PKI certificate before using EFS. PKI registration involves filing a paper authorization and receiving the EFS software from the USPTO. The certification process generally takes a few days to complete. A customer number will also be required for transacting business with the USPTO. Procedures to receive PKI certificates and customer numbers are fully described on the Patents Electronic Business Center Web Page, at the USPTO Website: <http://www.uspto.gov/ebc>.

#### Confirmation Numbers

In order to assure the publication of the proper specification with EFS Patent Application Publication submissions, the USPTO is issuing confirmation numbers for each specification. Once an application is in condition for publication, a four-digit confirmation number is generated and transmitted to the applicant. This confirmation number is used in conjunction with the application number to identify a pending specification. In EFS, when an applicant is submitting a replacement specification for publication or republication, the applicant must enter both the application number and the confirmation number in order to submit the replacement specification. This procedure is necessary because many applications will have identical filing dates and similar application numbers; a typographical error could result in the specification being placed in the wrong application. Confirmation numbers for all applications pending in November 2000 will be generated and mailed to applicants if they desire to have voluntary publication of these applications.

#### Effect of Patent Regulations

Section 22 of title 35 of the United States Code expressly provides for electronic filing of documents. However, because the current regulations are directed almost exclusively to paper submissions, the regulations do not speak to electronic submissions. To the extent that any USPTO regulation is inconsistent with EFS, the regulation will be interpreted in a manner to support EFS and waived, when necessary, until formal regulations directed to electronic submissions are promulgated. See 37 CFR 1.182, 1.183. When the Office has more experience with electronic submissions, formal regulations will be developed.

This waiver is consistent with the directives of current statutory guidance, including the Government Paperwork Elimination Act, Title XVII of Pub. L. 105-277, which in section 1707 states that government electronic records are not to be denied legal force and effect solely because they are in electronic form. The same section gives electronic signatures similar effect.

#### Weekend and Holiday Hours of Operation

The USPTO will be open for receiving applications in electronic form during scheduled hours every day of the week. Hours will be announced on the Patents Electronic Business Center Web Page, at the USPTO Website: <http://www.uspto.gov/ebc>.

Electronic filing will provide applicants with the opportunity to receive a filing date on any day of the week, including Saturday,

Sunday, and Federal holidays. In addition, consistent with 35 USC 21 (b), when the last day for taking any action or paying any fee in the USPTO falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken or fee paid on the next succeeding secular or business day. Thus, under United States law, applicants will still be permitted to take action on the next business day when the last day for taking action falls on a weekend or Federal holiday, regardless of the mode or form of filing.

Because the conditions for priority rights are governed by national law, applicants are cautioned to consider possible adverse consequences regarding the determination of priority periods under Article 4(C)(3) of the Paris Convention when filing international applications in the United States. Specifically, the ability to file applications electronically on weekends may result in loss of priority rights in foreign jurisdictions designated in international applications filed with the USPTO, if applicants elect to take advantage of sections 21(b) and 119(e)(3) of title 35. In such circumstances, other Patent Offices may deny the priority claim on the basis that the international application was not timely filed according to their national law. For this reason, applicants may prefer not to take advantage of sections 21(b) and 119(e)(3) of title 35 when filing international applications with the USPTO.

STEPHEN G. KUNIN  
Deputy Assistant Commissioner for  
Patent Policy and Projects

# EXHIBIT B



## Patent Office plans new e-filing system

By Anne Broache

[http://www.news.com/Patent-Office-plans-new-e-filing-system/2100-1028\\_3-5830864.html](http://www.news.com/Patent-Office-plans-new-e-filing-system/2100-1028_3-5830864.html)

Story last modified Fri Aug 12 17:52:35 PDT 2005

**ALEXANDRIA, Va.—The U.S. Patent and Trademark Office plans to overhaul its oft-maligned electronic patent filing process, starting with beta testing of a new, Web-based system in December and going live in March, an agency official said Friday.**

The office is looking to boost the less than 2 percent of patent filings—or slightly more than 7,000 this year—that currently arrive electronically, Acting Commissioner for Patents John Doll told attendees at the Independent Inventor Conference on the USPTO's new campus.

The push to go increasingly digital reflects the office's drive to get through a backlog of about 850,000 pending applications as the number continues to rise. The office recently spent 18 months digitizing 250 million pages of paper records. (Now paper applications are scanned within days of when they arrive). It also plans to hire 950 new examiners this year and more than 1,000 each year for the next several

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years "until we catch up," Doll said.

Most applicants currently send their forms the old-fashioned way. In fact, the Patent Office is the "largest recipient of overnight mail in the world," said Margaret Focarino, deputy commissioner for patent operations.

The Patent Office has been talking about going paperless for years and received its first application in electronic form during a pilot test in 1999.

The current e-filing system requires would-be filers to download and install five separate pieces of software, which occupy about 51MB of hard-drive space. From there, a multistep, complex process remains: Filers must use authoring software to fill out forms describing their

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## Patent Office plans new e-filing system

invention and then export those files to a separate program to continue the submission process.

According to system requirements, that software works only on computers running Windows 2000 or Windows XP, along with Internet Explorer. But using outside software to prepare the filings may cause them to be unreadable, the Patent Office Web site cautioned.

In an interview with CNET News.com, Doll variously described the existing e-filing system as "cumbersome," "very difficult" and "dreadful."

Doll said a patent filer for a major technology company once griped that he could not download the necessary software through his company's firewall, so he had to retrieve it at home and tote it to work on a disc.

The new system, by contrast, is a "client-light, Web-based portal," Doll said. That means that rather than downloading software, users would log into a Web-based Patent Office database, complete and save all of their work on the Patent Office's server, and submit it when they're ready. They would also have the ability through the system to circulate that work to others.

Doll said the office had hoped for a 4

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percent electronic filing rate this year, up from its typical 2 percent to 3 percent, but fell short even with new versions of software released last December and in April. For now, "technogeeks" who have learned tricks to mastering the system and swap tips with each other via online bulletin boards are the primary users, Doll said.

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The drop in usage led the Patent Office to convene, over the last nine months,

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## Patent Office plans new e-filing system

three public forums that brought together a cross-section of users—mostly lawyers—to vent and offer candid suggestions.

From there, officials reached one conclusion: "Everybody hates the current system," Doll said, adding that even cutting filing fees wouldn't convince many companies to use the electronic filing system as it stands now.

They wanted to see an easy-to-use process that offered, for example, drop-down menus offering frequently used options that one would normally have to type manually.

About 80 beta testers pulled from the public forums will begin trying out the system from Dec. 1 until March 16, 2006. The Web system is scheduled to be accessible to the public on March 17, 2006, a Patent Office representative said.

It's important to note that the Trademark Office, by contrast, has had more success with its own electronic system. Doll said more than 90 percent of trademark applicants submit at least their initial forms electronically, and about 30 percent conduct the entire process digitally. That larger volume, Doll said, is owed largely to the trademark application process' shorter, less complex forms.

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# EXHIBIT C

**DECLARATION OF ANGELINA LOZANO MOSCOWITZ**

I, Angelina Lozano Moscowitz, hereby declare and state as follows:

1. I am a legal secretary at the law firm of Dickinson Wright PLLC ("the DW Firm"). I was previously a legal secretary at the law firm of Artz & Artz P.C. ("the Artz Firm") from October 2000 until the Artz Firm merged its practice with the DW Firm in June 2007. I provide the following based on my own personal knowledge.

2. While a legal secretary at the Artz Firm, I worked primarily for Mr. Robert P. Renke and Mr. Steven W. Hays. However, because the Artz Firm was relatively small, the legal secretaries worked for other attorneys at various times as needed. My duties and responsibilities for them included all phases of patent prosecution as well as some litigation. On the patent prosecution side of things, I was responsible for maintaining the dockets of Mr. Renke and Mr. Hays from the reports that were generated by the firm's computer docketing system. I was also responsible for filing all communications with the Patent Office for Mr. Renke and Mr. Hays, including patent applications, amendments, issue fees, maintenance fees, foreign filings and the like. My duties and responsibilities were the same as the other legal secretaries in the firm, including Mrs. Latitia Ford.

3. I first met Latitia Ford when I started working at the Artz Firm in October 2000. She was already an employee with the Artz Firm when I began my employment with them.

4. In about 2000-2001, the Patent Office started its Electronic Filing System (EFS) and some of the Artz Firm's clients required us to begin filing patent applications

and other communications electronically with the Patent Office. Prior to that time, we had filed most everything by mail, such as Express Mail. Accordingly, the legal secretaries were all required to learn the steps necessary to file patent applications and other prosecution related filings electronically with the Patent Office.

5. All the legal secretaries at the Artz Firm were trained in these areas and quickly became proficient in the electronic filing requirements and procedures. As we were a relatively small office, I was familiar with the quality of Mrs. Ford's work as well as that of the other legal secretaries. Based on my first hand knowledge, it was my opinion that Mrs. Ford was a knowledgeable and competent secretary and was also proficient in the electronic filing.

6. During 2003, the Artz Firm began taking advantage of the Patent Office's electronic filing system for payment of maintenance fees. The fees are paid via the Internet and charged either to the deposit account or a credit card. This was a simple task that did not take long to do. In my experience, if a maintenance fee was to be paid, it was normal practice for the attorney to instruct the secretary to pay the fee based on an action item appearing on their docket. The secretary would then log onto the Patent Office website and pay the fee by charging it to the deposit account. Also, the secretary could print out a maintenance fee statement at that time that would indicate that the payment had been made.

7. Additionally, when paying the maintenance fee electronically on the Patent Office website, the system does not ask for, or provide any place for, an attorney's signature. It was normal practice within the firm for the legal secretary, based on

instructions from the attorney, to go onto the Patent Office website and make the necessary maintenance fee payment. This is also the way it is currently done at my current firm by the legal secretaries, most of which were here before we joined the DW Firm. It is also common practice with our larger clients who are responsible for the payment of their own maintenance fees.


8. Because the Artz Firm was relatively small, the attorneys and staff had significant interaction on a day-to-day basis. During my interaction with Latitia Ford from 2000-2005, she never told me that she was sick or that she had been diagnosed with an illness. Latitia was a very outgoing and friendly person with a large personality. During her time at the Artz Firm, I did not see any signs or symptoms that Latitia was sick or ill. She did not miss any significant time from work and appeared to be in good health. During the time we worked together, I also did not notice any unusual changes in her behavior or disposition.

9. The first time I ever heard anything about Latitia being seriously ill was in about June 2005 when one of her friends called the office to inform us that she had been admitted to the hospital. I never had any reason to suspect that this was an illness that she had while at the Artz Firm. I certainly never had any reason to believe that while working at the Artz Firm she had been suffering from a serious illness that could have affected her mental or physical abilities. Indeed, she took care of her two kids, attended their after-school events, and was active in other activities, including church functions. To my knowledge, nobody at the Artz Firm knew that she was sick. I also understand that she successfully hid it from her family and kids as well as everyone at the Artz Firm.

10. After Latitia passed away, I along with others in the Artz Firm attended her funeral. The only thing I ever heard about the cause of her death was that she died of a "brain infection". I never knew what this meant and never asked because it was none of my business. I assumed that this was something that came on after she left the firm. Based on my interaction with her, it was unreasonable to conclude that the illness she died of had been affecting her during her employment at the Artz Firm.

This Declaration is being signed under penalty of perjury. I hereby declare that all statements made therein of my own knowledge are true and all statements made on information and belief are believed to be true. Further, all statements made in the above Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001.

Date: January 7<sup>th</sup>, 2008

  
Angelina Lozano Moscovitz

# EXHIBIT D



**SUPPLEMENTAL DECLARATION OF JOHN S. ARTZ**

I, John S. Artz, hereby declare and state as follows:

1. I am the same John S. Artz that submitted a Declaration in connection with the Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Utility Patent Pursuant to 27 C.F.R. 1.378(b) on January 19, 2007. I provide this supplemental declaration to address some additional questions. I provide the following based on my own personal knowledge.

2. In about 2000-2001, two of the clients at the Artz Firm required that we begin filing patent applications and other communications electronically with the Patent Office under the new Electronic Filing System. These clients were part of the pilot program with the Patent Office. Prior to this time, our secretaries had done most everything by mail, such as Express Mail. Our legal secretaries worked with people from the Patent Office, and also worked with the administrative assistants that worked in-house for our clients in order to learn the EFS system. Since that time, the Artz Firm, including my secretary, Mrs. Latitia Ford, used the EFS system to file documents and make payments to the Patent Office.

3. At some point in 2002-2003, the Patent Office changed its procedures to allow maintenance fee payments to be paid over the Internet with the payment being charged to a deposit account or credit card. This is how we operated at the Artz Firm thereafter.

4. Once the Artz Firm began electronically filing their applications and paying maintenance fees on line, the attorneys did not need to physically sign any transmittal

documents. Where needed for patent applications, the Patent Office allowed an attorney's electronic signature to be inserted in lieu of a handwritten signature. For maintenance fees, even that was not required. The Patent Office allows anyone to pay a maintenance fee; an attorney's authorization is not needed.

5. Prior to the electronic payment of maintenance fees, Mrs. Ford and other legal secretaries at the Artz Firm mailed the maintenance fee payments to the Patent Office with a maintenance fee transmittal.

6. The payment of maintenance fees electronically using the Patent Office website is a relatively simple task and is merely a clerical function. If a maintenance fee payment appeared on an attorney's docket and the attorney had or received instructions to pay it, the attorney would instruct the secretary to pay the fee electronically. The secretary would then log onto the Patent Office website and pay the fee by charging it to the deposit account. Also, the secretary could print out a maintenance fee statement at that time that would indicate that the payment had been made. The secretary would then advise the attorney so it could be removed from the docket.

7. This is also the way it is currently done at my current firm by the legal secretaries, many of whom were at the DW firm before it was merged with Artz & Artz. It is also common practice with our larger clients who were responsible for the payment of maintenance fees to have their legal secretaries make the payments.

8. Examples illustrating the electronic payment of maintenance fees by Mrs. Ford are attached hereto as Exhibit 1.

9. Latitia Ford worked for Artz & Artz from 2000-2005. Throughout that time, Latitia was an outgoing and friendly person with an engaging personality. During the time that Mrs. Ford worked for me, she never told me that she was sick or had been diagnosed with any serious illness. Also, I never saw any signs or symptoms that she was sick or ill. She did not miss any significant time from work and always did her work functions in a cheerful and satisfactory manner. During the time we worked together, I never noticed any unusual change in Latitia's behavior or disposition. I similarly never noticed any decrease in her work efficiency.

10. Indeed, a week or two after Mrs. Ford left the Artz Firm in March 2005, she went on a previously scheduled vacation with her parents. A couple of days after she returned, she came into the office and spent an hour or so visiting with people and talking about her trip. She did not exhibit any signs or symptoms of illness during that visit and seemed to be the same Latitia I had always known.

11. The first time I ever heard anything about Latitia being ill was in about June 2005 when one of her friends called the office to inform us that she had been admitted to the hospital. She died shortly thereafter in July 2005. I never had any reason to suspect that this was an illness that she had while at the Artz Firm. I certainly never had any reason to believe that while working at the Artz Firm she had been suffering from an illness that could have affected her mental or physical abilities. She took care of her two children, attended their after-school events, and was active in other activities, including church functions. I understand that she successfully hid her illness from her family and children as well as everyone else at the Artz Firm.

12. After Latitia died, I along with others in the Artz Firm attended her funeral. Nothing about her cause of death was mentioned there. The only thing I ever heard about the cause of her death was that she died of a "brain infection". I assumed that this was something that came on after she had left the firm. We cared deeply for Latitia and the Artz Firm created a college scholarship fund for her children.

13. As set forth in the original Petition, I only became aware of the severity and length of her illness in early 2007 when I spoke with her widowed second husband, Rafael Ford. He told me that she hid her illness from her family, friends, kids, and everyone at the Artz Firm. Her mother confirmed this. While Mr. Ford did not tell me the exact cause of her death, he told me that she had been experiencing lapses in memory and forgetfulness.

14. In early 2007, after the missed maintenance fee was discovered and Mr. Ford had advised us of the additional facts, we had our attorneys and staff review the files and matters that Mrs. Ford had worked on while at the Artz Firm to make sure that all other dates were met and assignments were complete. They all were. This maintenance fee payment was the only thing she missed.

15. In the January 2007 Petition, we stated that Mrs. Ford did not appear to be herself by early 2005 (actually late 2004) and indicated that she was a little "overwhelmed." By this, I only meant that she did not appear to be as cheerful or carefree as I had become accustomed. (And, in fact, I took this in the same vein that others have said they were having a "bad day". Everyone feels that way at times.) I also partly attributed this to Mrs. Ford's personal issues unrelated to work. Specifically, I was

aware that her son had experienced periodic behavioral issues. I also was aware that she ultimately decided to send him to Kansas to live with his father (Latitia's first husband) for a year. After discussions with Mrs. Hubbard (Latitia's mother), I realized that this occurred in late 2004. These issues, however, never affected the quality of her work and were not something that gave me any cause for concern.

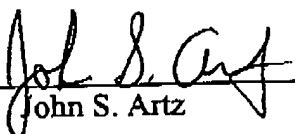
16. I now know the cause of her death and became aware of it in early 2007. Even with the benefit of hindsight, I cannot think of any sign or evidence that would have caused me (or anyone else for that matter) to suspect earlier that she was sick or that she had an illness or other condition that affected her ability to do her job or that affected her physical or mental capabilities.

17. In about February, 2007, I became aware of the specific fatal illness that she had and which ultimately was the cause of her death. This was when counsel for a competitor sent me a copy of her death certificate. We have tried to respect her privacy and have not stated the nature of that illness as recorded on the death certificate. She had gone to great lengths to keep it secret, particularly from her children, and we would like to maintain that privacy out of respect for her. If the Petitions Attorney needs more specific information, however, we can discuss a way to provide that information in a confidential manner.

This Declaration is being signed under penalty of perjury. I hereby declare that all statements made therein of my own knowledge are true and all statements made on information and belief are believed to be true. Further, all statements made in the above

Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001.

Date: January 7, 2008

  
\_\_\_\_\_  
John S. Artz

# EXHIBIT 1



# UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

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DATE PRINTED  
01/07/2008

LYON & ARTZ  
SUITE 250  
28333 TELEGRAPH ROAD  
SOUTHFIELD MI 48034

## MAINTENANCE FEE STATEMENT

According to the records of the U.S. Patent and Trademark Office (USPTO), the maintenance fee and any necessary surcharge have been timely paid for the patent listed below. The "PYMT DATE" column indicates the payment date (i.e., the date the payment was filed).

The payment shown below is subject to actual collection. If the payment is refused or charged back by a financial institution, the payment will be void and the maintenance fee and any necessary surcharge unpaid.

Direct any questions about this statement to: Mail Stop M Correspondence, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450.

PATENT NUMBER	FEE AMT	SUR CHARGE	PYMT DATE	U.S. APPLICATION NUMBER	PATENT ISSUE DATE	APPL. FILING DATE	PAYMENT YEAR	SMALL ENTITY?	ATTY DKT NUMBER
5,483,932	\$2,050.00	\$0.00	07/16/03	08/230,642	01/16/96	04/21/94	08	NO	SIMP 0109 PUS



## Deposit Account Statement


**United States  
Patent and  
Trademark Office**
**Deposit Account Statement**

Requested Statement Month:

July 2003

Deposit Account Number:

500476

Name:

JOHN A ARTZ P.C.

Attention:

JOHN A. ARTZ

Street Address 1:

28333 TELEGRAPH ROAD

Street Address 2:

SUITE 250

City:

SOUTHFIELD

State:

MI

Zip:

48034

Country:

UNITED STATES

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
				1001	\$750.00	\$8,062
				8021	\$40.00	\$8,022
				7004	\$150.00	\$7,872
				1707	\$134.00	\$7,738
				8007	\$20.00	\$7,718
				1001	\$750.00	\$6,968
				8021	\$40.00	\$6,928
				1001	\$750.00	\$6,178
				8021	\$40.00	\$6,138
				1001	\$750.00	\$5,388
				1201	\$84.00	\$5,304
				8021	\$40.00	\$5,264
				2001	\$375.00	\$4,889
				2801	\$375.00	\$4,514
				2253	\$465.00	\$4,049
				9203	-\$6,000.00	\$10,049
				7205	\$100.00	\$9,949
				7208	\$200.00	\$9,749
				1001	\$750.00	\$8,999
				1001	\$750.00	\$8,249
				1202	\$882.00	\$7,367
				1201	\$168.00	\$7,199
				1801	\$750.00	\$6,449
				1201	\$84.00	\$6,365
				9204	-\$160.00	\$6,525
				1001	\$750.00	\$5,775

## Deposit Account Statement

07/17 11 5483932 SIMP 0109 PUS

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9204	-\$250.00	\$5,946
8021	\$40.00	\$5,906
1801	\$740.00	\$5,166
1001	\$750.00	\$4,416
1202	\$36.00	\$4,386
2252	\$205.00	\$4,176
9204	-\$25.00	\$4,206
1552	\$2,050.00	\$2,156
9203	-\$8,000.00	\$10,116
2002	\$165.00	\$9,986
8021	\$40.00	\$9,946
7004	\$150.00	\$9,796
1605	\$490.00	\$9,306
1705	\$172.00	\$9,136
7004	\$150.00	\$8,986
1501	\$1,300.00	\$7,686
1504	\$300.00	\$7,386
7003	\$100.00	\$7,286
8021	\$40.00	\$7,246
1051	\$130.00	\$7,116
1001	\$750.00	\$6,366
1202	\$36.00	\$6,336
1801	\$750.00	\$5,586
1806	\$180.00	\$5,406
1806	\$180.00	\$5,226
1806	\$180.00	\$5,046
1806	\$180.00	\$4,866
1806	\$180.00	\$4,686
1806	\$540.00	\$4,146
8021	\$40.00	\$4,106
1806	-\$540.00	\$4,646
1806	\$180.00	\$4,466
7001	\$335.00	\$4,126
1001	\$750.00	\$3,376
8021	\$40.00	\$3,336
9203	-\$6,000.00	\$9,336
2001	\$375.00	\$8,966
9204	-\$130.00	\$9,096
7004	\$300.00	\$8,796
1001	\$750.00	\$8,046
8021	\$40.00	\$8,006
1001	\$750.00	\$7,256
8021	\$40.00	\$7,216
1001	\$750.00	\$6,466
8021	\$40.00	\$6,426
1001	\$750.00	\$5,676

## Deposit Account Statement

8021	\$40.00	\$5,630
1806	\$180.00	\$5,450
1806	\$180.00	\$5,270
1501	\$1,300.00	\$3,970
1504	\$300.00	\$3,670
1501	\$1,300.00	\$2,370
1504	\$300.00	\$2,070
1001	\$750.00	\$1,320
1202	\$18.00	\$1,300
8021	\$40.00	\$1,260

START BALANCE	SUM OF CHARGES	SUM OF REPLENISH	END BALANCE
\$8,812.00	\$28,655.00	\$21,105.00	\$1,262.00

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Customer No 000000

ISTMT

DATE PRINTED  
01/08/2008

JOHN A ARTZ  
28333 TELEGRAPH ROAD  
SUITE 250  
SOUTHFIELD MI 48034

**MAINTENANCE FEE STATEMENT**

According to the records of the U.S. Patent and Trademark Office (USPTO), the maintenance fee and any necessary surcharge have been timely paid for the patent listed below. The "PYMT DATE" column indicates the payment date (i.e., the date the payment was filed).

The payment shown below is subject to actual collection. If the payment is refused or charged back by a financial institution, the payment will be void and the maintenance fee and any necessary surcharge unpaid.

Direct any questions about this statement to: Mail Stop M Correspondence, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450.

PATENT NUMBER	FEE AMT	SUR CHARGE	PYMT DATE	U.S. APPLICATION NUMBER	PATENT ISSUE DATE	APPL FILING DATE	PAYMENT YEAR	SMALL ENTITY?	ATTY DKT NUMBER
6,135,921	\$455.00	\$65.00	09/28/04	09/203,446	10/24/00	12/01/98	04	YES	HOLL 0101 PUS

## Deposit Account Statement


**United States  
Patent and  
Trademark Office**
**Deposit Account Statement**

Requested Statement Month:

September 2004

Deposit Account Number:

500476

Name:

JOHN A ARTZ P.C.

Attention:

JOHN A. ARTZ

Street Address 1:

28333 TELEGRAPH ROAD

Street Address 2:

SUITE 250

City:

SOUTHFIELD

State:

MI

Zip:

48034

Country:

UNITED STATES

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
				1811	\$100.00	\$11,249.00
				1202	\$18.00	\$11,231.00
				1252	\$310.00	\$10,921.00
				8001	\$15.00	\$10,906.00
				1806	\$180.00	\$10,726.00
				1204	\$86.00	\$10,640.00
				1202	\$198.00	\$10,442.00
				1801	\$770.00	\$9,672.00
				1252	\$420.00	\$9,252.00
				1806	\$180.00	\$9,072.00
				8001	\$15.00	\$9,057.00
				1004	\$770.00	\$8,287.00
				1204	\$344.00	\$7,943.00
				1205	\$306.00	\$7,637.00
				1201	\$86.00	\$7,551.00
				1202	\$180.00	\$7,371.00
				2251	\$55.00	\$7,316.00
				2201	\$172.00	\$7,144.00
				2202	\$27.00	\$7,117.00
				9203	-\$5,000.00	\$12,117.00
				7004	\$300.00	\$11,817.00
				1806	\$180.00	\$11,637.00
				2801	\$385.00	\$11,252.00
				1814	\$110.00	\$11,142.00
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## Deposit Account Statement

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1001	\$770.00	\$8,792.00
1201	\$172.00	\$8,620.00
8021	\$40.00	\$8,580.00
1202	\$360.00	\$8,220.00
1814	\$110.00	\$8,110.00
1252	\$420.00	\$7,690.00
1001	\$770.00	\$6,920.00
1201	\$172.00	\$6,748.00
8021	\$40.00	\$6,708.00
1202	\$360.00	\$6,348.00
8021	\$40.00	\$6,308.00
1460	\$130.00	\$6,178.00
1801	\$770.00	\$5,408.00
1253	\$950.00	\$4,458.00
1001	\$770.00	\$3,688.00
1202	\$324.00	\$3,364.00
1201	\$258.00	\$3,106.00
8021	\$40.00	\$3,066.00
9203	-\$10,000.00	\$13,066.00
1001	\$770.00	\$12,296.00
1617	\$130.00	\$12,166.00
1252	\$420.00	\$11,746.00
1001	\$770.00	\$10,976.00
8021	\$40.00	\$10,936.00
1001	\$770.00	\$10,166.00
1001	\$770.00	\$9,396.00
7001	\$335.00	\$9,061.00
7001	\$335.00	\$8,726.00
7001	\$335.00	\$8,391.00
7001	\$335.00	\$8,056.00
7001	\$335.00	\$7,721.00
1001	\$770.00	\$6,951.00
2253	-\$475.00	\$7,426.00
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2001	\$385.00	\$6,656.00
2202	\$117.00	\$6,539.00
8021	\$40.00	\$6,499.00
1001	\$770.00	\$5,729.00
8021	\$40.00	\$5,689.00
7001	\$335.00	\$5,354.00
9203	-\$10,000.00	\$15,354.00
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8021	\$40.00	\$14,689.00
1001	\$770.00	\$13,919.00
8021	\$40.00	\$13,879.00
2801	\$385.00	\$13,494.00

PAGE 40/58 \* RCVD AT 1/8/2008 6:18:25 PM [Eastern Standard Time] \* SVR:USPTO-EFXRF-6/4 \* DNS:2738300 \* CSID:248 433 7274 \* DURATION (mm-ss):15-58 7/2007



United States  
Patent and  
Trademark Office



**Maintenance Fee Statement**

6066056

The data shown below is from the records of the Patent and Trademark Office. If the maintenance fees and any necessary surcharges have been timely paid for the patents listed below, the notation "PAID" will appear in column 11, "STAT" below.

If a maintenance fee payment is defective, the reason is indicated by code in column 11, "STAT" below. TIMELY CORRECTION IS REQUIRED IN ORDER TO AVOID EXPIRATION OF THE PATENT. NOTE 37 CFR 1.377. THE PAYMENT(S) ENTERED UPON RECEIPT OF ACCEPTABLE CORRECTION. IF PAYMENT OR CORRECTION IS SUBMITTED DURING THE GRACE PERIOD, A SURCHARGE IS ALSO REQUIRED. NOTE 37 CFR 1.20(k) and (l).

If the statement of small entity status is defective the reason is indicated below in column 10 for the related patent number. THE STATEMENT OF SMALL ENTITY STATUS WILL BE ENTERED UPON RECEIPT OF ACCEPTABLE CORRECTION.

ITEM NBR	PATENT NUMBER	FEE CDE	FEE AMT	SUR CHARGE	SERIAL NUMBER	PATENT DATE	FILE DATE	PAY YR	SML ENT	STAT
1	6,066,056	2551	455	065	08/920,915	05/23/00	08/29/97	04	YES	PAID
000000										

ITEM NBR	ATTY DKT NUMBER
-------------	--------------------

WAKR0120PUS

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Deposit Account Statement

Requested Statement Month:

December 2003

Deposit Account Number:

500476

Name:

JOHN A ARTZ P.C.

Attention:

JOHN A. ARTZ

Street Address 1:

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Street Address 2:

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City:

SOUTHFIELD

State:

MI

Zip:

48034

Country:

UNITED STATES

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
				8021	\$40.00	\$10,
				1202	\$252.00	\$10,
				1201	\$86.00	\$10,
				7004	\$150.00	\$10,
				1202	-\$36.00	\$10,
				8007	\$60.00	\$10,
				1001	\$770.00	\$9,2
				8021	\$40.00	\$9,2
				7004	\$150.00	\$9,0
12/03	105	6066056	WLI 1005 PUS	2551	\$455.00	\$8,6
12/03	106	6066056	WLI 1005 PUS	2554	\$65.00	\$8,5
				2552	\$1,045.00	\$7,5
				2555	\$65.00	\$7,4
				2551	\$455.00	\$6,9
				2554	\$65.00	\$6,9
				8021	\$40.00	\$6,8
				2551	\$455.00	\$6,4
				2554	\$65.00	\$6,3
				2551	\$455.00	\$5,9
				2551	\$455.00	\$5,4
				9203	-\$10,000.00	\$15,
				1401	\$330.00	\$15,
				1202	\$702.00	\$14,
				1201	\$602.00	\$13,
				9204	-\$950.00	\$14,
				1502	\$480.00	\$14,

**UNITED STATES PATENT AND TRADEMARK OFFICE**

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Customer No 27256

ISTMT

DATE PRINTED  
01/08/2008

Dickinson Wright PLLC  
38525 Woodward Avenue  
Suite 2000  
Bloomfield Hills MI 48304

**MAINTENANCE FEE STATEMENT**

According to the records of the U.S. Patent and Trademark Office (USPTO), the maintenance fee and any necessary surcharge have been timely paid for the patent listed below. The "PYMT DATE" column indicates the payment date (i.e., the date the payment was filed).

The payment shown below is subject to actual collection. If the payment is refused or charged back by a financial institution, the payment will be void and the maintenance fee and any necessary surcharge unpaid.

Direct any questions about this statement to: Mail Stop M Correspondence, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450.

PATENT NUMBER	FEE AMT	SUR CHARGE	PYMT DATE	U.S. APPLICATION NUMBER	PATENT ISSUE DATE	APPL. FILING DATE	PAYMENT YEAR	SMALL ENTITY?	ATTY DKT NUMBER
6,085,354	\$455.00	\$0.00	12/04/03	09/081,922	07/11/00	05/20/98	04	NO	WLI 1134 PUS



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 Patent and  
 Trademark Office**

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**Maintenance Fee Statement**

**6085354**

The data shown below is from the records of the Patent and Trademark Office. If the maintenance fees and any necessary surcharges have been timely paid for the patents listed below, the notation "PAID" will appear in column 11, "STAT" below.

If a maintenance fee payment is defective, the reason is indicated by code in column 11, "STAT" below. **TIMELY CORRECTION IS REQUIRED IN ORDER TO AVOID EXPIRATION OF THE PATENT. NOTE 37 CFR 1.377. THE PAYMENT(S) ENTERED UPON RECEIPT OF ACCEPTABLE CORRECTION. IF PAYMENT OR CORRECTION IS SUBMITTED DURING THE GRACE PERIOD, A SURCHARGE IS ALSO REQUIRED. NOTE 37 CFR 1.20(k) and (l).**

If the statement of small entity status is defective the reason is indicated below in column 10 for the related patent number. **THE STATEMENT OF SMALL ENTITY STATUS WILL BE ENTERED UPON RECEIPT OF ACCEPTABLE CORRECTION.**

ITEM NBR	PATENT NUMBER	FEE CDE	FEE AMT	SUR CHARGE	SERIAL NUMBER	PATENT DATE	FILE DATE	PAY YR	SML ENT	STAT
1	6,085,354	2551	455	0	09/081,922	07/11/00	05/20/98	04	YES	PAID
000000										

ITEM NBR	ATTY DKT NUMBER

1

DAREDEV.013D

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Deposit Account Statement



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**Deposit Account Statement**

**Requested Statement Month:**  
**Deposit Account Number:**  
**Name:**  
**Attention:**  
**Street Address 1:**  
**Street Address 2:**  
**City:**  
**State:**  
**Zip:**  
**Country:**

December 2003  
 500476  
 JOHN A ARTZ P.C.  
 JOHN A. ARTZ  
 28333 TELEGRAPH ROAD  
 SUITE 250  
 SOUTHFIELD  
 MI  
 48034  
 UNITED STATES

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
				8021	\$40.00	\$10.
				1202	\$252.00	\$10.
				1201	\$86.00	\$10.
				7004	\$150.00	\$10.
				1202	-\$36.00	\$10.
				8007	\$60.00	\$10.
				1001	\$770.00	\$9.2
				8021	\$40.00	\$9.2
				7004	\$150.00	\$9.0
				2551	\$455.00	\$8.6
				2554	\$65.00	\$8.5
				2552	\$1,045.00	\$7.5
				2555	\$65.00	\$7.4
				2551	\$455.00	\$6.9
				2554	\$65.00	\$6.9
				8021	\$40.00	\$6.8
				2551	\$455.00	\$6.4
				2554	\$65.00	\$6.3
12/04	127	6085354	WLI 1134 PUS	2551	\$455.00	\$5.9
				2551	\$455.00	\$5.4
				9203	-\$10,000.00	\$15.
				1401	\$330.00	\$15.
				1202	\$702.00	\$14.
				1201	\$602.00	\$13.
				9204	-\$950.00	\$14.
				1502	\$480.00	\$14.



United States  
Patent and  
Trademark Office



**Maintenance Fee Statement**

**6122769**

The data shown below is from the records of the Patent and Trademark Office. If the maintenance fees and any necessary surcharges have been timely paid for the patents listed below, the notation "PAID" will appear in column 11, "STAT" below.

If a maintenance fee payment is defective, the reason is indicated by code in column 11, "STAT" below. **TIMELY CORRECTION IS REQUIRED IN ORDER TO AVOID EXPIRATION OF THE PATENT. NOTE 37 CFR 1.377. THE PAYMENT(S) ENTERED UPON RECEIPT OF ACCEPTABLE CORRECTION. IF PAYMENT OR CORRECTION IS SUBMITTED DURING THE GRACE PERIOD, A SURCHARGE IS ALSO REQUIRED. NOTE 37 CFR 1.20(k) and (l).**

If the statement of small entity status is defective the reason is indicated below in column 10 for the related patent number. **THE STATEMENT OF SMALL ENTITY STATUS WILL BE ENTERED UPON RECEIPT OF ACCEPTABLE CORRECTION.**

ITEM NBR	PATENT NUMBER	FEE CODE	FEE AMT	SUR CHARGE	SERIAL NUMBER	PATENT DATE	FILE DATE	PAY YR	SML ENT	STAT
1	6,122,769	2551	455	0	09/128,958	09/26/00	08/04/98	04	YES	PAID
000000										

ITEM NBR	ATTY DKT NUMBER
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1

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**Deposit Account Statement**

**Requested Statement Month:** December 2003  
**Deposit Account Number:** 500476  
**Name:** JOHN A ARTZ P.C.  
**Attention:** JOHN A. ARTZ  
**Street Address 1:** 28333 TELEGRAPH ROAD  
**Street Address 2:** SUITE 250  
**City:** SOUTHFIELD  
**State:** MI  
**Zip:** 48034  
**Country:** UNITED STATES

DATE SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
			8021	\$40.00	\$10,
			1202	\$252.00	\$10,
			1201	\$86.00	\$10,
			7004	\$150.00	\$10,
			1202	-\$36.00	\$10,
			8007	\$60.00	\$10,
			1001	\$770.00	\$9,2
			8021	\$40.00	\$9,2
			7004	\$150.00	\$9,0
			2551	\$455.00	\$8,6
			2554	\$65.00	\$8,5
			2552	\$1,045.00	\$7,5
			2555	\$65.00	\$7,4
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			2551	\$455.00	\$5,9
			2551	\$455.00	\$5,4
12/04	128 6122769	WLI 1135 PUS	9203	-\$10,000.00	\$15,
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			1201	\$602.00	\$13,
			9204	-\$950.00	\$14,
			1502	\$480.00	\$14,

# EXHIBIT E

## **United States Patent and Trademark Office OG Notices: 01 January 2002**

### **Payment of Patent Maintenance Fees over the Internet**

The United States Patent and Trademark Office (USPTO) now accepts maintenance fee payments by deposit account over the Internet. For more than a year the USPTO has provided customers the capability to pay maintenance fees by credit card or electronic funds transfer (EFT) using the USPTO Internet website. Now, as a result of recent enhancements, the USPTO Internet website is also capable of accepting maintenance fee payments by charging to a deposit account. Whether a maintenance fee is to be paid by credit card, EFT or deposit account, the USPTO Internet website is regularly available year-round to process the payment at any time of the day, except during regular scheduled maintenance (see the website for details).

The Internet payment vehicle provides benefits to both the customer and the USPTO. Compared to payments made through the mail, the Internet procedure for paying maintenance fees is not subject to any fee handling delays and it offers customers the advantage of fast and reliable payment confirmation (usually under 90 seconds) and allows the USPTO to manage its resources more effectively.

The Internet procedure for paying maintenance fees is provided by the USPTO Office of Finance via the "Office of Finance On-Line Shopping Page." Patentees and their representatives are encouraged to use this procedure whenever a maintenance fee payment is required. This Notice explains how to access the Internet payment procedure from the USPTO Internet web site and encourages users to obtain a receipt upon completing the Internet payment procedure.

To access the "Office of Finance On-Line Shopping Page" from the USPTO Internet web site (<http://www.uspto.gov>), click the "Check Status" button on the web site. The "Check Status" web page shall appear. Then, under the "Check status of" column, click the "Patent maintenance fees" hyperlink, and the "On-Line Shopping" web page shall appear. On the "On-Line Shopping Page" a choice must be made between maintaining a deposit account and paying a patent maintenance fee. Click on "Pay Patent Maintenance Fees" to begin the Internet payment procedure.

After entering the relevant "Patent Number" and the corresponding "Application Number" on the initial web page of the Internet payment procedure, another web page shall appear showing the relevant fee information as well as a "Make Payment" button and a box labeled "To view a Statement after payment." Before clicking the "Make Payment" button, the box labeled "To view a Statement after payment" should be checked in order to prompt an updated statement of maintenance fees paid upon successful completion of the payment procedure. You will not be able to ask for an updated statement on any of the succeeding web pages of the Internet payment procedure.

The succeeding web pages of the Internet payment procedure require the user to specify the form of payment (i.e., credit card, EFT, or deposit account) and to enter the appropriate payment information. The final web page of the Internet payment procedure, titled "Payment Information Summary," is where maintenance fee payment occurs. Review the payment information appearing on this web page, and if all the information is correct, click the "Continue" button to make payment.

Provided the "To view a statement after payment" box was checked as recommended in the underlined section above, a payment confirmation



screen will automatically appear containing an updated maintenance fee payment statement showing the desired maintenance fee payment has been made. It is suggested that you print a copy of this payment statement as a receipt of maintenance fee payment. The Office will accept the receipt as proof that the payment shown thereon was timely made. Of course, in order for actual payment by credit card or EFT to occur, your banking or credit card institution must transfer the money to the Office. If the "To view a statement after payment" box was not checked as recommended above, payment confirmation is simply in the form of a "Transaction Successful" message.

Any difficulty using the Internet payment procedure or obtaining a receipt of maintenance fee payment should be brought to the attention of the Patent Maintenance Fee Division by calling (703) 308-5068/5069.

Note: as an alternative to the Internet payment procedure, particularly where a payment deadline is near, a maintenance fee payment can be timely made using the Certificate of Mailing procedure set forth at 37 CFR 1.8. Maintenance Fee payments should now be mailed to: United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh PA 15250-1611. See 37 CFR 1.1(d); Revision of Patent Fees for Fiscal Year 2002, 1249 Off. Gaz. Pat. Office 110, 112 (August 28, 2001).

Questions concerning this notice should be directed to Gisele Jones, Director, Receipt Accounting Division, Office of Finance, by telephone at (703) 308-9649, by facsimile at (703) 308-6778, or by e-mail at Gisele.Jones@uspto.gov.

December 6, 2001

MICHELLE PICARD  
Director, Office of Finance

# EXHIBIT F

**DECLARATION OF STEVEN W. HAYS**

I, Steven W. Hays, hereby declare and state as follows:

1. I am an attorney at the law firm of Dickinson Wright PLLC ("the DW Firm"). I was previously an attorney at the law firm of Artz & Artz P.C. ("the Artz Firm") from 1999 until the Artz Firm merged its practice with the DW Firm in June 2007. I provide the following based on my own personal knowledge.
2. I graduated from the University of Michigan in 1988 with a degree in Cellular and Molecular Biology. I received my J.D from Loyola University in New Orleans in 1995. I am also registered to practice before the United States Patent and Trademark Office. I am a member in good standing of the State Bar of Michigan (active) and Illinois (inactive).
3. I met Latitia Ford when she started working at the Artz Firm in about 2000 in an accounting role. I knew her and interacted with her on a regular basis while she worked at the Artz Firm.
4. At some point in 2001, Mrs. Ford began working for Mr. John S. Artz as legal secretary. I did a lot of work for John S. Artz and thus had significant interaction with Latitia in her capacity as his legal secretary. During my interaction with her, I found her to be a very good and reliable secretary. I also found her to be very bright. On a personal note, Latitia was very friendly and well liked. She had a very good personality and was extremely outgoing.
5. During the time that I interacted with her from 2000 to 2005, I never saw any sign or any symptom that Latitia was seriously sick or ill. I never saw any change in

her personality or disposition that was out of the ordinary or that would have caused me to believe that she was ill or sick. At no time was I ever aware or did I even suspect that Latitia was sick or not in good health – let alone suffering from a terminal illness. To my knowledge, nobody at the Artz Firm knew that she was sick. I understand that she did not tell anyone about the existence of her illness and also that she successfully hid it from people at the Artz Firm as well as her family and kids.

6. I became aware that Latitia died in about July 2005. I along with others in the Artz Firm attended her funeral. The first time I ever heard that she was ill was when someone in the office told me that she had been admitted to the hospital. At that time, I did not know and had no reason believe that this was an illness that she had during her employment with the Artz Firm. The only thing I ever heard about the cause of her death was that she died of a “brain infection”.

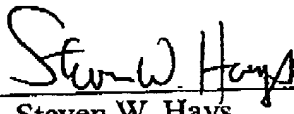
7. I never had any reason to believe that the illness that caused Latitia’s death had any impact on her employment or could have had any effect on her job responsibilities or quality. More specifically, the fact she died of an illness in August 2005 did not cause me to question or give me any concern regarding the quality of her work or call into question whether she competently performed all duties required by her employment.

8. The first time I, or anyone else to my knowledge, became aware that she was suffering from a long-standing illness was in about January 2007. Even with the benefit of hindsight, I cannot think of any sign or evidence that would have caused me (or anyone else for that matter) to suspect that she was sick or that she had an illness or other

condition that affected her ability to do her job or that effected her physical or mental capabilities.

This Declaration is being signed under penalty of perjury. I hereby declare that all statements made therein of my own knowledge are true and all statements made on information and belief are believed to be true. Further, all statements made in the above Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001.

Date: January 7, 2008

  
Steven W. Hays

# EXHIBIT G

**DECLARATION OF ANNIE L. HUBBARD**

I, Annie L. Hubbard, hereby declare and state as follows:

1. I have been contacted by the law firm of Artz & Artz ("the Artz law firm") and have been asked to provide this Declaration. I provide the following information based on my own personal knowledge.

2. I am Latitia Ford's mother. Her father and I live in Detroit and Latitia and her two children (Marrice and Monique) lived near us until her illness and death. Latitia died on July 30, 2005, of a "brain infection".

3. I am a former principal and thus value education. Latitia graduated from Cass Technical High School, which is a public school in Detroit for advanced students. Latitia attended college at Central Michigan and after college moved to San Diego with her first husband.

4. After her divorce, Latitia moved back to Detroit in July, 1997, and began working at the University of Detroit Jesuit High School as a bookkeeper.

5. In 2000, she began working at the law firm of Artz & Artz in their accounting department. She was later promoted to a legal assistant or secretary for John S. Artz and worked for him until March, 2005, when she ceased working at the Artz law firm. Latitia was a very proud woman and took great pride in her work.

6. I now understand that Latitia had been ill for a few years before she passed away. I did not know this until after she was admitted into the hospital on June 30, 2005. She kept the existence of her illness from her family, including her mother, father, brother, husband and children. I also now understand that sometime in 2004, she

developed fatal complications from her illness that ultimately lead to her death. Again, I do not know exactly when she received this diagnosis as she again kept this information from her family. I also know that she kept the existence of the illness as well as its subsequent complications from Mr. John S. Artz and anyone else at the Artz firm.

7. While I do not know the exact date that the terminal nature of her illness was diagnosed, it was before October, 2004. I base this on the fact that in October, 2004, Latitia who had full custody of her two children sent her son Marrice to live with his father in Kansas. Latitia was a very proud, determined and stubborn woman. This is evidenced by her desire to fight this battle by herself without involving anyone else. I learned after the fact that she had sent Marrice away to live with his father because she was having problems dealing with the nature of her illness.

8. I did not know how burdened or troubled Latitia was at the time or how the illness was affecting her. Latitia was active in her church, taking her daughter to soccer practice and seemed to be taking care of her personal business. Because of this, I did not have any reason to believe anything was wrong with her at the time. It is my opinion, based on what I know now, that she was aware by at least the fall of 2004 that her illness had progressed so significantly that her time was short.



This Declaration is being signed under penalty of perjury. I hereby declare that all statements made therein of my own knowledge are true and all statements made on information and belief are believed to be true. Further, all statements made in the above Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001.

Date: January 24, 2007

  
Annie L. Hubbard